

commuter passenger service shall implement mandatory reasonable suspicion testing according to the procedures listed in paragraph (b) of this section beginning on January 1, 1995.

(2) Each Class II railroad shall implement mandatory reasonable suspicion testing according to the procedures listed in paragraph (b) of this section beginning on July 1, 1995. Prior to that date, a Class II railroad may use the procedures described in paragraphs (c) through (e) of this section.

(3) Each Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall implement mandatory reasonable suspicion testing according to the procedures listed in paragraph (b) of this section beginning on January 1, 1996. Prior to that date, a Class III railroad may use the procedures described in paragraphs (c) through (e) of this section.

(4) In the case of a railroad commencing operations after January 1, 1996, the railroad shall implement mandatory reasonable suspicion testing not later than the expiration of 60 days from approval by the Administrator of the railroad's random testing programs.

(b) As provided for in subparagraph (a)(1) of this section, the conduct of alcohol testing under this subpart is governed by subpart H of this part and part 40 of subtitle A of this title.

(c)-(e) [Reserved]

(f)(1) Under the circumstances set forth in § 219.301, a railroad may require an employee to participate in a breath alcohol screening test solely for the purpose of determining whether the conduct of a test meeting the criteria of paragraph (a) is indicated. If the screening test is negative within the meaning of paragraph (b), the employee shall not be required to submit to further breath testing under this subpart. If the screening test is positive, no consequence shall attach except that the employee may be removed from covered service for the period necessary to conduct a breath test meeting the criteria of paragraph (a).

(2) Except as provided in paragraph (d)(2)(iii) of this section, the conduct of a screening test under paragraph (d)(1) of this section does not excuse full

compliance with paragraph (a) of this section with respect to any breath test procedure which is then undertaken. If a screening test is positive, the following procedures govern:

(i) An initial breath test shall be conducted meeting the criteria of paragraph (a) of this section.

(ii) If that test is positive, a second breath test shall be conducted meeting the criteria of paragraph (a) of this section.

(iii) The second test meeting the criteria of section (a) of this section must be conducted at least 15 minutes after the positive screening test conducted under paragraph (d)(1) of this section. However, since a waiting period of 15 minutes is sufficient to permit the dissipation of any alcohol in the mouth, the requirement of paragraph (a)(5) of this section that there be a period of at least 15 minutes between the two tests meeting the criteria of paragraph (a) of this section does not apply.

[59 FR 60563, Nov. 25, 1994, as amended at 62 FR 63467, Dec. 1, 1997]

§ 219.305 Urine test procedures and safeguards.

The conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent not inconsistent with this part) part 40 of subtitle A of this title.

Subpart E—Identification of Troubled Employees

§ 219.401 Requirement for policies.

(a) The purpose of this subpart is to prevent the use of alcohol and drugs in connection with covered service.

(b) Each railroad shall adopt, publish and implement—

(1) A policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of this part (hereafter "voluntary referral policy"); and

(2) A policy designed to foster employee participation in preventing violations of this subpart and encourage